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C O N F I D E N T I A L SECTION 01 OF 02 DHAKA 000031

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SUBJECT: EXECUTION OR CLEMENCY: WHAT LIES AHEAD FOR SHEIKH  
MUJIBUR RAHMAN'S KILLERS?

Classified By: Ambassador James F. Moriarty for Reasons (b) and (d)

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Summary  
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11. (SBU) On January 3, 2010, a Dhaka court issued death warrants against five former army officers convicted in the August 1975 assassination of then-President Sheikh Mujibur Rahman and members of his family. While those convicted can still request a final judicial review and appeal for clemency, their sentences will likely be carried out within the next month. Six other convicts who remain fugitives also face the death penalty should they return. Recent polls indicate that the vast majority of Bangladeshis support the effort to bring Sheikh Mujib's killers to justice.

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Death Warrants, Judgments and Appeals  
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12. (SBU) The trial of the assassins of Bangladeshi President Sheikh Mujibur Rahman began over a decade ago, after the killers' amnesty was rescinded during Prime Minister Sheikh Hasina's first term in office. The final chapter in the trial resumed following Hasina's return to power in January 2009. The Appellate Division of the Supreme Court announced its long awaited verdict on November 19, 2009 and released its full judgment on December 17, 2009. The five convicts received copies of this full judgment on December 22, 2009. On receipt, the convicts had 30 days within which to make an application for a final judicial review.

13. (SBU) On January 3, 2010, a Dhaka Sessions Court judge issued death warrants, which were sent to the Jail Superintendent of the Dhaka Central Jail, where the convicts were being held. On receipt of the warrants, pursuant to provisions of the Jail Code, the convicts had seven days in which to petition to the President for a pardon under Article 49 of the Constitution of Bangladesh. The executions were to take place between day 21 and day 28 after receipt of the death warrants. The separate judicial appeals process is outlined below. As of January 10, 2010, none have filed a judicial appeal, while three have applied for presidential clemency.

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Fate of Defendants Not in Bangladesh  
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¶4. (SBU) The verdict of the Appellate Division confirmed the death penalties of the five, among twelve convicted for the killings of Sheikh Mujib and his family. The five had appealed their convictions. The death sentences of the seven other convicts, who did not appeal against the lower courts' judgment, remain in place. Of the seven remaining convicts, one is deceased and six have fled Bangladesh. One is in Canada and the others are assumed to be in North Africa, Burma, and in the United States. Should they return to Bangladesh, they would be immediately arrested and would face the death penalty. While they could also ask for an opportunity to appeal, they would have to explain the reason for the delay in filing appeals. If they were granted leave to appeal, the same procedures would be followed as was applied in the case of the five in custody.

¶5. (SBU) The Appellate Division rejected all the grounds of appeal from the defense counsel. The decision stated that the convicts had been correctly tried under ordinary criminal law rather than martial law, since at the time of commission of the offences they were not in active military service within the meaning of the Army Act 1952. It further stated that the incidents of August 15, 1975 were not a case of criminal conspiracy to commit mutiny, but were a case of criminal conspiracy to commit the murder of Sheikh Mujibur Rahman and his family. The Appellate Division did not accept the assertion that the prosecution had failed to prove the charges, and hence that the lower

DHAKA 00000031 002 OF 002

courts had caused a serious miscarriage of justice by confirming the death sentences. The court was of the opinion that the appellants had failed to make the case of extenuating circumstances and dismissed all the appeals.

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Comment  
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¶6. (C) A recent poll conducted by Bangladesh's largest Bangla-language newspaper, Prothom Alo, showed that an overwhelming majority (over 90 percent) of Bangladeshis supported the government's efforts to bring the killers to justice. With this popular support, the anticipated executions will finally close a long and litigious chapter of Bangladeshi history. Few believe that President Zillur Rahman, who was appointed to his position by Sheikh Hasina in January, will grant clemency. It is also unlikely that the Appellate Division panel would reverse its own recent decision in order to halt the executions. The execution of the convicted killers will likely cause Bangladesh to redouble its efforts to seek the return of the remaining fugitives.  
MORIARTY